

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Lashawn Sharpe, individually and on behalf of all
other similarly situated,

Plaintiff,

-against-

A&W Concentrate Company and Keurig Dr
Pepper Inc.,

Defendants.

Case No.: 1:19-cv-00768 (BMC)

**DECLARATION OF
CREIGHTON MAGID**

I, Creighton Magid, declare as follows:

1. I am a Partner in the law firm of Dorsey & Whitney LLP and am one of the attorneys representing defendants A&W Concentrate Company and Keurig Dr Pepper Inc. in this litigation.
2. Attached hereto as Exhibit A are true and correct photographs of bottles of A&W Root Beer and A&W Cream Soda.
3. Attached hereto as Exhibit B are true and correct photographs of a case of 12 ounce cans of A&W Root Beer. (I was unable to locate a case of A&W Cream Soda.)
4. Attached hereto as Exhibit C are true and correct images of Figures 1 and 2 from the Alliance Technologies report attached as Exhibit 1 to the report of Plaintiff's designated expert, Daphna Havkin-Frenkel.
5. Attached hereto as Exhibit D are true and correct copies of excerpts from the transcript of the November 15, 2019, deposition of Plaintiff's designated expert, Daphna Havkin-Frenkel.

6. Attached hereto as Exhibit E is a true and correct copy of an article authored by Plaintiff's designated expert, Daphna Havkin-Frenkel entitled, *Vanilla: the food of the Gods*. On the second page of the article, Dr. Havkin-Frenkel describes the last stage of the curing process for vanilla beans as "'conditioning' or aging." I have highlighted that reference for convenience.

7. On August 1, 2019, Plaintiff served a Mass Spectrometry Laboratory Analysis Report, which Plaintiff characterized as his expert report in this matter. A true and correct copy of the Mass Spectrometry Laboratory Analysis Report is attached hereto as Exhibit F. The TSQ-7000 Mass Spectrometry Analysis Data Form and data printouts accompanying the Report indicate that the testing was performed between April 12, 2019, and April 15, 2019.

8. On August 13, 2019, Plaintiff informed the Court and Defendants that the person who generated the Mass Spectrometry Laboratory Analysis Report did not wish to be deposed in this matter, and informing the Court and Defendants that Plaintiff wished to substitute Daphna Havkin-Frenkel as an expert and to submit a new gas chromatography mass spectrometry analysis. Plaintiff's August 13, 2019, may be found at Docket Entry 19 in this matter.

9. Plaintiff then submitted an "Expert Report of Dr. Daphna Havkin-Frenkel" on September 12, 2019. Dr. Havkin-Frenkel's report, a true and correct copy of which is attached hereto as Exhibit G, includes a gas chromatography mass spectrometry analysis dated August 27, 2019. Figures 1 and 2 of that analysis indicates that the samples of A&W Root Beer and A&W Cream Soda were tested on August 22, 2019.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 20th day of December, 2019.



Creighton Magid